

S.219: an act relating to addressing racial bias and excessive use of force by law enforcement
Side by side comparison
6/26/20

As passed the Senate	On House Calendar (as of 11 AM)	Notes
<p>Sec. A.1. LEGISLATIVE INTENT</p> <p><u>(a) This act is a continuation of the General Assembly’s work over the past several years to create meaningful reforms to address systemic racism and disproportionate use of force by law enforcement. Such reforms include 2017 Act No. 54, an act relating to the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel; 2018 Act No. 9, an act relating to racial equity in State government; 2013 Act No. 180, an act relating to a statewide policy on the use of and training requirements for electronic control devices; 2016 Act No. 163, an act relating to a model State policy for use of body cameras by law enforcement officers; and 2017 Act No. 56, an act relating to the professional regulation of law enforcement officers by the Vermont Criminal Justice Training Council.</u></p>	<p>Sec. 1. LEGISLATIVE INTENT</p> <p><u>(a) This act is a continuation of the General Assembly’s work over the past several years to create meaningful reforms to address any systemic racism and disproportionate use of force by law enforcement. Such reforms include 2017 Acts and Resolves No. 54, an act relating to the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel; 2018 Acts and Resolves No. 9, an act relating to racial equity in State government; 2013 Acts and Resolves No. 180, an act relating to a statewide policy on the use of and training requirements for electronic control devices; and 2017 Acts and Resolves No. 56, an act relating to the professional regulation of law enforcement officers by the Vermont Criminal</u></p>	<p>House removed one act in the list in subsection (a), added a sentence to subsection (b), and added a new subsection (c) containing a list of actions the legislature intends to take in the future.</p>

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<p><u>The ongoing effort includes the work on S.338 (2020), an act relating to justice reinvestment, a data-driven approach to improve public safety, reduce criminal justice spending, and reinvest savings in strategies that can decrease crime and reduce recidivism. Additionally, several legislative committees continue to study law enforcement policies, training standards, and discipline, including work on updating a model policy for the use of body cameras. Therefore, this act represents one step in the legislature’s ongoing effort to combat racial bias and increase accountability in policing.</u></p>	<p><u>Justice Training Council. The ongoing effort includes the work on S.338 (2020), an act relating to justice reinvestment, a data-driven approach to improve public safety, reduce criminal justice spending, and reinvest savings in strategies that can decrease crime and reduce recidivism. Additionally, the legislative committees of jurisdiction continue to study law enforcement policies, training standards, and discipline, including accreditation through the Commission on Accreditation for Law Enforcement Agencies within the next five years, and work on updating a model policy for the use of body cameras. Therefore, this act represents one step in the General Assembly’s ongoing effort to combat racial bias and increase transparency and accountability in policing.</u></p> <p><u>The General Assembly is committed to</u></p>	
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<p>(b) <u>It is the intent of the General Assembly that law enforcement agencies in Vermont use community policing strategies that develop collaborative partnerships between law enforcement and communities, adopt policies and practices that reflect a guardian mindset towards the citizens they serve, and establish a culture of transparency and accountability to promote public safety and foster public trust. To this end, it is the intent of the General Assembly that law enforcement use de-escalation strategies first and foremost before using force in every community-police interaction.</u></p>	<p><u>continually assessing the progress made by the State towards developing a system of public safety that is effective, equitable, and maintains the public trust and continuing its work to achieve that goal.</u></p> <p>(b) <u>It is the intent of the General Assembly that law enforcement agencies in Vermont use community policing strategies that develop collaborative partnerships between law enforcement and communities consistent with the pillars of 21st Century Policing as developed by President Obama’s Task Force on 21st Century Policing, adopt policies and practices that reflect a guardian mindset towards the citizens they serve, and establish a culture of transparency and accountability to promote public safety and foster public trust. To this end, it is the intent of the General Assembly that</u></p>	
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	<p><u>law enforcement use de-escalation strategies first and foremost before using force in every community-police interaction.</u></p> <p><u>(c) It is the intent of the General Assembly that it continue to work on the issues addressed in this bill, including when the 2020 legislative session reconvenes in August. Specifically, the General Assembly commits to working on:</u></p> <p><u>(1) increasing the resources to and authority of the Executive Director of Racial Equity;</u></p> <p><u>(2) resituating the Criminal Justice Training Council to the jurisdiction of the Department of Public Safety;</u></p> <p><u>(3) evaluating the provisions of Sec. 6 of this act (law enforcement use of prohibited restraint), 13 V.S.A. § 2305, and 24 V.S.A. § 299 in consultation with interested stakeholders, including the Attorney General, the Executive</u></p>	
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	<p><u>Director of States Attorneys and Sheriffs, the Defender General, and the Executive Director of the Human Rights Commission, or their designees, and revising those provisions as appropriate;</u></p> <p><u>(4) evaluating whether and how to gather data regarding the interactions between law enforcement and people with mental health issues;</u></p> <p><u>(5) reviewing the Law Enforcement Advisory Board and ACLU model policies governing law enforcement use of body cameras in consultation with interested stakeholders, including the Vermont chapter of the American Civil Liberties Union, the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel, and the Secretary of State, and</u></p>	
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	<p><u>developing a statewide policy for adoption prior to the effective date of Sec. 7 of this act; and</u> <u>(6) considering recommendations that come forward through a process of meaningful community engagement, particularly with impacted, marginalized, and vulnerable communities.</u></p>	
<p>Sec. 1. 3 V.S.A. § 2222 is amended to read: § 2222. POWERS AND DUTIES; BUDGET AND REPORT * * *</p> <p><u>(k) The Secretary of Administration or designee shall review all grants from an agency of the State to a local law enforcement agency or constable, and all such grants shall be subject to the approval of the Secretary or designee. The Secretary or designee shall approve the grant only if the law</u></p>	<p>[Same as Senate version]</p>	<p>Same but renumbered as Sec. 2.</p>

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<p><u>enforcement agency or constable has complied with the race data reporting requirements set forth in 20 V.S.A. § 2366(e) within six months prior to the Secretary’s or designee’s review.</u></p>		
<p>Sec. 2. SECRETARY OF ADMINISTRATION; NOTICE TO LAW ENFORCEMENT AGENCIES <u>On or before August 1, 2020, the Secretary of Administration shall issue a notice to all Vermont law enforcement agencies and constables that the provisions of 3 V.S.A. § 2222(k) become effective on January 1, 2021, and that, beginning on that date, State grant funding for law enforcement shall be contingent on the agency or constable complying with the requirements of 20 V.S.A. § 2366(e).</u></p>	<p>[Same as Senate version]</p>	<p>Same but renumbered to Sec. 3.</p>

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<p>Sec. 3. 20 V.S.A. § 2366 is amended to read:</p> <p>§ 2366. LAW ENFORCEMENT AGENCIES; FAIR AND IMPARTIAL POLICING POLICY; RACE DATA COLLECTION</p> <p style="text-align: center;">* * *</p> <p>(e)(1) On or before September 1, 2014, every State, county, and municipal law enforcement agency shall collect roadside stop data consisting of the following:</p> <ul style="list-style-type: none"> (A) the age, gender, and race of the driver; (B) the reason for the stop; (C) the type of search conducted, if any; (D) the evidence located, if any; and (E) the outcome of the stop, including <u>whether physical force was employed or threatened in effectuating the stop, and if so, the type of force</u> 	<p>Sec. 4. 20 V.S.A. § 2366 is amended to read:</p> <p>§ 2366. LAW ENFORCEMENT AGENCIES; FAIR AND IMPARTIAL POLICING POLICY; RACE DATA COLLECTION</p> <p style="text-align: center;">* * *</p> <p>(e)(1) On or before September 1, 2014, every State, county, and municipal law enforcement agency shall collect roadside stop data consisting of the following:</p> <ul style="list-style-type: none"> (A) the age, gender, and race of the driver; (B) the reason <u>grounds</u> for the stop; (C) the <u>grounds for the search and the</u> type of search conducted, if any; (D) the evidence located, if any; and (E) the outcome of the stop, including <u>whether physical force was employed or threatened during the stop, and if so, the type of</u> 	<p>House version makes a few minor changes to this section.</p> <p>Expands data collection to include grounds for a</p>
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<p><u>employed and whether the force resulted in bodily injury or death, and</u> whether:</p> <ul style="list-style-type: none"> (i) a written warning was issued; (ii) a citation for a civil violation was issued; (iii) a citation or arrest for a misdemeanor or a felony occurred; or (iv) no subsequent action was taken. <p>(2) Law enforcement agencies shall work with the <u>Executive Director of Racial Equity, the Criminal Justice Training Council,</u> and a vendor chosen by the Council with the goals of collecting uniform data, adopting uniform storage methods and periods, and ensuring that data can be analyzed. Roadside stop data, as well as reports and analysis of roadside stop data, shall be public.</p> <p>(3) On or before September 1, 2016 and annually thereafter, law enforcement agencies shall</p>	<p><u>force employed and whether the force resulted in bodily injury or death, and</u> whether:</p> <ul style="list-style-type: none"> (i) a written warning was issued; (ii) a citation for a civil violation was issued; (iii) a citation or arrest for a misdemeanor or a felony occurred; or (iv) no subsequent action was taken. <p>(2) Law enforcement agencies shall work with the <u>Executive Director of Racial Equity, the Criminal Justice Training Council,</u> and a vendor chosen by the Council with the goals of collecting uniform data, adopting uniform storage methods and periods, and ensuring that data can be analyzed. Roadside stop data, as well as reports and analysis of roadside stop data, shall be public.</p> <p>(3) On or before September 1, 2016 and annually thereafter, law enforcement agencies</p>	<p>search, if a search takes place.</p>
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<p>provide the data collected under this subsection to <u>the Executive Director of Racial Equity and the vendor chosen by the Criminal Justice Training Council under subdivision (2) of this subsection or, in the event the vendor is unable to continue receiving data under this section, to the Council.</u> Law enforcement agencies shall provide the data collected under this subsection in an electronic format specified by the receiving entity.</p> <p>(4) The data provided pursuant to subdivision (3) of this subsection shall be posted electronically in a manner that is analyzable, <u>user-friendly</u>, and accessible to the public on the receiving agency’s website. <u>The receiving agency shall also report the data annually to the General Assembly.</u></p>	<p>shall provide the data collected under this subsection to <u>the Executive Director of Racial Equity and the vendor chosen by the Criminal Justice Training Council under subdivision (2) of this subsection or, in the event the vendor is unable to continue receiving data under this section, to the Council.</u> Law enforcement agencies shall provide the data collected under this subsection in an electronic format specified by the receiving entity.</p> <p>(4) The data provided pursuant to subdivision (3) of this subsection shall be posted electronically in a manner that is analyzable and accessible to the public on the receiving agency’s website <u>and clear and understandable.</u> <u>The receiving agency shall also report the data annually to the General Assembly.</u></p>	<p>House version changes wording from “user-</p>
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<p><u>(5) As used in this subsection, “physical force” shall refer to the force employed by a law enforcement officer to compel a person’s compliance with the officer’s instructions, including contact controls, compliance techniques, defensive tactics, and deadly force.</u></p> <p>(f) Nothing in this section is intended to prohibit or impede any public agency from complying with the lawful requirements of 8 U.S.C. §§ 1373 and 1644. To the extent any State or local law enforcement policy or practice conflicts with the lawful requirements of 8 U.S.C. §§ 1373 and 1644, that policy or practice is, to the extent of the conflict, abolished.</p>	<p><u>(5) As used in this subsection, “physical force” shall refer to the force employed by a law enforcement officer to compel a person’s compliance with the officer’s instructions that constitutes a greater amount of force than handcuffing a compliant person.</u></p> <p>(f) Nothing in this section is intended to prohibit or impede any public agency from complying with the lawful requirements of 8 U.S.C. §§ 1373 and 1644. To the extent any State or local law enforcement policy or practice conflicts with the lawful requirements of 8 U.S.C. §§ 1373 and 1644, that policy or practice is, to the extent of the conflict, abolished.</p>	<p>friendly” to “clear and understandable”</p> <p>House version removes law enforcement terms of art to use plain language.</p>
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<p>Sec. 4. 20 V.S.A. chapter 151 (Vermont Criminal Justice Training Council), subchapter 2 is amended to read:</p> <p>Subchapter 2. Unprofessional Conduct</p> <p>§ 2401. DEFINITIONS</p> <p>As used in this subchapter:</p> <p style="text-align: center;">* * *</p> <p>(2) “Category B conduct” means gross professional misconduct amounting to actions on duty or under color of authority <u>of the State</u>, or both, that involve willful failure to comply with a State-required policy or substantial deviation from professional conduct as defined by the law enforcement agency’s policy or if not defined by the agency’s policy, then as defined by Council policy, such as <u>and shall include</u>:</p> <p>(A) sexual harassment involving physical contact or misuse of position;</p>	<p>Sec. 5. 20 V.S.A. chapter 151 (Vermont Criminal Justice Training Council), subchapter 2 is amended to read:</p> <p>Subchapter 2. Unprofessional Conduct</p> <p>§ 2401. DEFINITIONS</p> <p>As used in this subchapter:</p> <p style="text-align: center;">* * *</p> <p>(2) “Category B conduct” means gross professional misconduct amounting to actions on duty or under color of authority <u>of the State</u>, or both, that involve willful failure to comply with a State-required policy or substantial deviation from professional conduct as defined by the law enforcement agency’s policy or if not defined by the agency’s policy, then as defined by Council policy, such as <u>and shall include</u>:</p> <p>(A) sexual harassment involving physical contact or misuse of position;</p>	<p>House made this section effective September 1, 2020.</p>
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<p>(B) misuse of official position for personal or economic gain;</p> <p>(C) excessive use of force under color of authority <u>of the State</u>, second <u>first</u> offense;</p> <p>(D) biased enforcement; or</p> <p>(E) use of electronic criminal records database for personal, political, or economic gain;</p> <p><u>(F) placing a person in a prohibited restraint; or</u></p> <p><u>(G) failing to intervene when the officer observes another officer placing a person in a prohibited restraint or using excessive force.</u></p> <p>* * *</p> <p>(5) “Unprofessional conduct” means Category A, B, or C conduct.</p> <p>* * *</p>	<p>(B) misuse of official position for personal or economic gain;</p> <p>(C) excessive use of force under color of authority <u>of the State</u>, second <u>first</u> offense;</p> <p>(D) biased enforcement; or</p> <p>(E) use of electronic criminal records database for personal, political, or economic gain;</p> <p><u>(F) placing a person in a prohibited restraint;</u></p> <p><u>(G) failing to intervene and report to a supervisor when the officer observes another officer placing a person in a prohibited restraint or using excessive force.</u></p> <p>* * *</p> <p>(5) “Unprofessional conduct” means Category A, B, or C conduct.</p> <p>* * *</p>	<p>House version expands the new conduct that may be</p>
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<p><u>(7) “Prohibited restraint” means the use of any maneuver on a person that applies pressure to the neck, throat, windpipe, or carotid artery that may prevent or hinder breathing, reduce intake of air, or impede the flow of blood or oxygen to the brain.</u></p> <p style="text-align: center;">* * *</p> <p>§ 2407. LIMITATION ON COUNCIL SANCTIONS; FIRST OFFENSE OF CATEGORY B CONDUCT</p> <p>(a) Category B conduct; first offense. If a law enforcement agency conducts a valid investigation of a complaint alleging that a law enforcement officer committed a first offense of Category B conduct, the Council shall take no action, <u>except that the Council may take action for a first offense under subdivision 2401(2)(F) (placing a person in a prohibited restraint) or 2401(2)(G) (failing to</u></p>	<p><u>(7) “Prohibited restraint” means the use of any maneuver on a person that applies pressure to the neck, throat, windpipe, or carotid artery that may prevent or hinder breathing, reduce intake of air, or impede the flow of blood or oxygen to the brain.</u></p> <p style="text-align: center;">* * *</p> <p>§ 2407. LIMITATION ON COUNCIL SANCTIONS; FIRST OFFENSE OF CATEGORY B CONDUCT</p> <p>(a) Category B conduct; first offense. If a law enforcement agency conducts a valid investigation of a complaint alleging that a law enforcement officer committed a first offense of Category B conduct, the Council shall take no action, <u>except that the Council may take action for a first offense under subdivision 2401(2)(C) (excessive use of force under authority of the</u></p>	<p>considered Category B misconduct.</p> <p>House includes excessive use of force as conduct</p>
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<p><u>intervene when an officer observes another officer placing a person in a prohibited restraint or using excessive force) of this chapter.</u></p> <p style="text-align: center;">* * *</p>	<p><u>State), 2401(2)(F) (placing a person in a prohibited restraint), or 2401(2)(G) (failing to intervene and report to a supervisor when an officer observes another officer placing a person in a prohibited restraint or using excessive force) of this chapter.</u></p> <p style="text-align: center;">* * *</p>	<p>that is sanctionable by the Council as a first offense.</p>
<p>Sec. 5. 13 V.S.A. § 1032 is added to read:</p> <p><u>§ 1032. LAW ENFORCEMENT USE OF PROHIBITED RESTRAINT</u></p> <p><u>(a) As used in this section:</u></p> <p><u>(1) “Law enforcement officer” shall have the same meaning as in 20 V.S.A. § 2351a.</u></p> <p><u>(2) “Prohibited restraint” means the use of any maneuver on a person that applies pressure to the neck, throat, windpipe, or carotid artery that may prevent or hinder breathing, reduce intake of air, or impede the flow of blood or oxygen to the brain.</u></p>	<p>[Same as Senate version]</p>	<p>House made this section effective on October 1, 2020, and sunset the provision on July 1, 2021.</p>

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<p><u>(3) “Serious bodily injury” shall have the same meaning as in section 1021 of this title.</u></p> <p><u>(b) A law enforcement officer acting in the officer’s capacity as law enforcement who employs a prohibited restraint on a person that causes serious bodily injury to or death of the person shall be imprisoned for not more than 20 years or fined not more than \$50,000.00, or both.</u></p>		
<p>Sec. 6. 20 V.S.A. § 1818 is added to read: <u>§ 1818. EQUIPMENT OF OFFICERS WITH VIDEO RECORDING DEVICES</u> <u>The Department shall ensure that every Department law enforcement officer who exercises law enforcement powers is equipped with a body camera or other video recording device on his or her person and that the device is recording</u></p>	<p>Sec. 7. 20 V.S.A. § 1818 is added to read: <u>§ 1818. EQUIPMENT OF OFFICERS WITH VIDEO RECORDING DEVICES</u> <u>The Department shall ensure that every Department law enforcement officer who exercises law enforcement powers is equipped with a body camera or other video recording device on his or her person.</u></p>	<p>House made this section effective on October 1, 2020 and removed the requirement regarding when the devices must be recording, in accordance with its intent section regarding adopting a body cam usage policy.</p>

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<p><u>whenever the officer has contact with the public for law enforcement purposes.</u></p> <p>Sec. 7. DEPARTMENT OF PUBLIC SAFETY; VIDEO RECORDING DEVICES; ONGOING COSTS</p> <p><u>The Department of Public Safety shall immediately initiate the acquisition and deployment of video recording devices to comply with the requirements of 20 V.S.A. § 1818. The ongoing costs of the devices that cannot be accommodated within the Department’s budget shall be included in the Department’s FY21 budget proposal to the General Assembly in August of 2020.</u></p>	<p>Sec. 8. DEPARTMENT OF PUBLIC SAFETY; VIDEO RECORDING DEVICES; ONGOING COSTS</p> <p><u>The Department of Public Safety shall immediately initiate the acquisition of video recording devices to comply with the requirements of 20 V.S.A. § 1818. The ongoing costs of the devices that cannot be accommodated within the Department’s budget shall be included in the Department’s FY22 budget proposal to the General Assembly.</u></p>	<p>House removes requirement that DPS immediately deploy body cams, and pushes back the date by which DPS must propose additional funding for ongoing costs of body cams in its budget.</p>
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<p>[No corresponding Senate version]</p>	<p>Sec. 9. REPEALS</p> <p style="padding-left: 40px;"><u>(a) 13 V.S.A. § 1032 (law enforcement use of prohibited restraint) is repealed on July 1, 2021.</u></p> <p style="padding-left: 40px;"><u>(b) 13 V.S.A. § 2305(3) (justifiable homicide) is repealed on July 1, 2021.</u></p>	<p>House version repeals new crime and subdivision (3) of justifiable homicide statute in July of 2021.</p>
<p>Sec. 8. EFFECTIVE DATES</p> <p><u>(a) Sec. 1 (powers and duties; budget and report) of this act shall take effect on January 1, 2021.</u></p> <p><u>(b) Sec. 6 (equipment of officers with video recording devices) shall take effect on August 1, 2020.</u></p> <p><u>(c) The remaining sections shall take effect on passage.</u></p>	<p>Sec. 10. EFFECTIVE DATES</p> <p><u>(a) Sec. 2 (powers and duties; budget and report) of this act shall take effect on January 1, 2021.</u></p> <p><u>(b) Sec. 5 (20 V.S.A. chapter 151) takes effect on September 1, 2020.</u></p> <p><u>(c) Secs. 6 (law enforcement use of prohibited restraint) and 7 (equipment of officers with video recording devices) shall take effect on October 1, 2020.</u></p>	<p>House version moves back effective dates for equipping VSP with body cameras to October 1 (gives General Assembly the opportunity to adopt a statewide body camera policy in August). Also moves back the effective date for the new crime to October 1, and moves</p>

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	<p>(d) <u>The remaining sections shall take effect on passage.</u></p>	<p>back the effective date of the unprofessional conduct subchapter to September 1.</p>
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